TEO CHWEE GEOK v. NG HUI LIP & COMPANY

[F.C. (Tan Ah Tah F.J., Chua & Winslow JJ.) February 3, 1967]

[Singapore — Federal Court Civil Appeal No. Y12 of 1966]

Landlord and Tenant — Tenancy — Terms for — Tenant's alleged promise to return premises on ceasing of his business — Promise denied — Conflicting evidence — Control of Rent Ordinance (Cap. 242), s. 15.

Practice and Procedure — Appeal — Question of fact — Principles on which appellate court may interfere with lower court's finding of fact.

Land Laws — Assignment of interest in land — Application of Statute of Frauds, s. 3.

This was an appeal by the appellant/plaintiff against a declaration by the High Court that a judgment delivered by it in his favour for recovery of possession of the ground floor of premises known as No. 202 Orchard Road, Singapore from the first defendants Maynard & Co. Ltd. (who have not appealed and are hereinafter referred to as "Maynard's"), was not enforceable against the second defendants, the respondents in this appeal.

The plaintiff was the chief tenant of the ground and first floors of the premises in question which are subject to the Control of Rent Ordinance (Cap. 242). On March 1, 1960 he sublet the ground floor to one Peter Chong on a monthly tenancy at a rent of $120 per month through the good offices of an intermediary known as Lee Swee Hin, who was a pharmacist in the employment of Maynard's of which Peter Chong was the chairman of the board of directors. A few months after the death of Peter Chong in September 1960, the plaintiff granted the tenancy of the said ground floor to Maynard's at the same monthly rent. On or about June 6, 1963, Maynard's ceased to carry on the business of a dispensary on the ground floor which, at the end of August 1963. they are alleged to have sublet or assigned to the second defendants without the plaintiff's consent at a rent of $132 per month.

The principal witnesses on either side were the plaintiff and Lee Swee Hin respectively who differed in their versions of the terms on which the ground floor was let to Peter Chong and later to Maynard's. According to the plaintiff, Lee Swee Hin, the representative of Peter Chong, promised him that on the latter's ceasing to run a dispensary on the ground floor the premises would be returned to him. Lee Swee Hin denied any such promise.

The important question of fact for determination by the court below was whether it was a term of Peter Chong's tenancy and later of Maynard's that they would give up possession on ceasing to run a dispensary on the ground floor of the premises in question. On this vital issue there were conflicting versions. The learned trial judge finally came to the conclusion that "Lee Swee Hin never said to the plaintiff that he would return the ground floor to the plaintiff if he ceased to run the chemist's shop," and he accordingly found that it was not a term of either Peter Chong's tenancy or that of Maynard's that they should give up possession on ceasing to carry on the business of a dispensary on the ground floor. He, therefore, held that the plaintiff had not made out a case for recovery of possession under paragraph (b) of section 15(1) of the Ordinance. The learned trial judge, however, held that the plaintiff had made out a case for recovery of possession against Maynard's under paragraph (*l*) of the same section.

On appeal the question for consideration was whether the learned trial judge came to the right conclusion as to the said promise because, if his finding in that respect could not be supported, then the declaration which he made under section 26 may have to be reversed.

Counsel for the plaintiff urged the appellate court to reject the finding of the learned trial judge on the ground that he had mis-directed himself in the evaluation of the evidence and that reasons for his conclusion were unsatisfactory if not plainly wrong in some part.

Held: (1) having regard to the intention of the parties as clearly revealed by their evidence, there was clear subletting in this case within the meaning of the expression as set out in section 26 of the Control of Rent Ordinance;

(2) Maynard's as subtenant of the plaintiff/appellant were not bound by any prohibition against subletting or assigning or parting with the possession imposed on the plaintiff/appellant;

(3) section 3 of the Statute of Frauds, which is still law in the Republic, provides that no lease, estate or interest in the land shall be assigned unless by deed or note in writing signed by the party so assigning. Therefore in the absence of a deed or note in writing signed by Maynard's it was impossible to hold that there was valid assignment of the ground floor by Maynard's to the defendants;

(4) if an appellate court is satisfied that the trial judge was plainly wrong on a question of fact and that any advantage which he enjoyed by virtue of having seen and heard the witnesses was not sufficient to explain his conclusion then it would be entitled to reject the trial judge's finding. Retrial ordered because the learned trial judge was plainly wrong in his approach to and evaluation of the evidence with regard to the promise alleged.

Cases referred to:—

(1) *Goldstein* v. *Sanders* [1915] 1 Ch. 549.

(2) *Mackusick* v. *Carmichael* [1917] 2 K.B. 561.

(3) *Pollock & Anor.* v. *Stacy*, 115 E.R. 1570.

(4) *Beardman* v. *Wilson* (1868), L.R. 4 C.P. 57.

(5) *Coghlan* v. *Cumberland* [1898] 1 Ch. 704 at p. 705.

(6) *The Glannibanta* (1876), L.R. 1 P.D. 283, at p. 287.

(7) *Yuill* v. *Yuill* [1945] P. 15 at p. 19.

(8) *Khoo Sit Hoh & Ors.* v. *Lim Thean Tong* [1912] A.C. 323 at p. 325.

(9) *Bennax* v. *Austin Motor Co. Ltd.* [1945] 1 All E.R. 326.

(10) *Tay Kheng Hong* v. *Heap Moh Steamship Co. Ltd.* [1964] M.L.J. 87.

FEDERAL COURT.

K. E. Hilborne for the appellant.

J. F. McWilliams for the respondents.

Cur. Adv. Vult.

Winslow J.: This is an appeal by the plaintiff against a declaration by the High Court that a judgment delivered by it in his favour for recovery of possession of the ground floor of premises known as No. 202 Orchard Road, Singapore from the first defendants, Maynard & Co. Ltd. (who have not appealed and are hereinafter referred to as "Maynard's"), was not enforceable against the second defendants, the respondents in this appeal.

The plaintiff is the chief tenant of the ground and first floors of the premises in question which are subject to the Control of Rent

Ordinance (Cap. 242) (hereinafter referred to as "the Ordinance").

On 1st March 1960 he sublet the ground floor to one Peter Chong on a monthly tenancy at a rent of $120 per month through the good offices of an intermediary known as Lee Swee Hin, who was a pharmacist in the employment of Maynard's of which Peter Chong was the chairman of the board of directors.

A few months after the death of Peter Chong in September 1960, the plaintiff granted the tenancy of the said ground floor to Maynard's at the same monthly rent. On or about 6th June 1963, Maynard's ceased to carry on the business of a dispensary on the ground floor which, at the end of August 1963, they are alleged to have sublet or assigned to the second defendants without the plaintiff's consent at a rent of $132 per month.

The principal witnesses on either side were the plaintiff and Lee Swee Hin respectively who differed in their versions of the terms on which the ground floor was let to Peter Chong and later to Maynard's.

According to the plaintiff, Lee Swee Hin, the representative of Peter Chong, promised him that on the latter's ceasing to run a dispensary on the ground floor the premises would be returned to him.

Lee Swee Hin denied any such promise.

The significance of a finding as to who was telling the truth on this vital issue lies in the fact that the court, if satisfied that such a promise had been made, could have declared that the judgment for recovery of possession of the ground floor entered against Maynard's was enforceable against the second defendants under section 26 of the Ordinance.

It may be useful, before dealing with the finding of fact relating to this issue to dispose of an argument which was presented by counsel for the plaintiff in his opening address to the learned trial judge but which was not, apparently, pursued later at the trial itself owing to the importance attached by all concerned to the factual finding as to the existence of the aforesaid promise — so much so that counsel for the plaintiff did not even raise a point, which he stressed before this court, that a covenant in a lease not to assign or sublet or part with possession of the premises demised ran with the land so as to bind all sub-lessees and assignees although not mentioned therein.

It should be noted that the terms of the tenancy between the superior landlord (whose agents were Estate and Trust Agencies Ltd.) and the plaintiff contained a prohibition against subletting, assigning the tenancy or parting with the possession of the premises or part thereof (see page 78 of the record). The plaintiff was the tenant of the superior landlord of the ground and first floors. He had, without any doubt, sublet the ground floor to persons prior to Peter Chong's sub-tenancy in 1960 to whom Peter Chong paid valuable compensation before Lee Swee Hin finalized the negotiations for the sub-tenancy, on his behalf, with the plaintiff. Estate and Trust Agencies Ltd. agreed to these sub-tenancies including the sub-tenancy to Peter Chong and subsequently Maynard's. They knew nothing however of the assignment or subletting to the second defendants, nor did the plaintiff himself until after the latter had been let into possession on Maynard's effectively ceasing to carry on the business of a dispensary on the ground floor. The second defendants paid compensation in the sum of $22,000 to Maynard's for this and accordingly did not acquire possession as a result of any charitable inclinations on the latter's part. This however does not enhance their case *vis-a-vis* the plaintiff if Peter Chong and Maynard's, through Lee Swee Hin, had bound themselves to return the ground floor to the plaintiff on their ceasing to run a dispensary or a chemist's shop (as it is sometimes referred to) thereon.

I do not think that any prohibition (in the tenancy arrangements between Estate and Trust Agencies Ltd. and the plaintiff) against subletting or assigning or parting with possession of the premises or part thereof ran with the land so as to bind Maynard's. It is clear that they were not assignees of the plaintiff but only his sub-tenants in respect of the ground floor. They were not sub-tenants of the entire premises of which the plaintiff was the chief tenant. Had they been assignees of the plaintiff, the principle established by *Goldstein* v. *Sanders* [1] might have applied so as to make such a covenant run with the land so as to bind Maynard's as that case decided that such a covenant binds assignees although not mentioned. It does not, however, run with the land so as to bind sub-tenants.

In *Mackusick* v. *Carmichael* [2] it was held, according to the head-note, that "Where a lessee, who has covenanted for himself and his assigns that he will not sublet or part with possession of the premises without the consent of the lessor, sublets them, the lessor cannot, if the sub-lessee further sublets without his consent, complain of such further subletting as a breach of covenant by the lessee. A sub-lessee is not for that purpose an assign."

I am not here concerned, of course, with the liability to the lessor of a lessee for breach of a covenant arising out of the act of a sub-lessee. The result of applying *Mackusick's* case to the facts of this case is that, if the plaintiff had covenanted for himself and his assigns, his superior landlord could not have complained of the transfer of possession by Maynard's to the

second defendants as a breach of covenant by the plaintiff because Maynard's were not the plaintiff's assigns. Whether the second defendants were assignees or sub-tenants of Maynard's is therefore irrelevant to that question although it may be relevant in relation to section 26(1) of the Ordinance which reads as follows:—

"Where any order or judgment for the recovery of possession has been obtained against any tenant of premises, such order or judgment shall not be enforceable against any sub-tenant of such tenant unless the court is satisfied that such tenant was prohibited by the terms of his tenancy from sub-letting or that such sub-tenant has used the premises for illegal or immoral purposes. Every order or judgment for possession made against any tenant shall declare whether it shall be enforceable against any sub-tenant or not."

It should be remembered that, although the plaintiff did not covenant for himself and his assigns, section 57 of the Conveyancing and Law of Property Ordinance (Cap. 243) provides that assigns shall be deemed to be included in a covenant such as this.

I must, of course, not be taken to express any view, in this appeal, as to the effect of the decision in *Mackusick's* case on the rights of the superior landlord (who is not a party) with regard to any of the parties in this action.

All that *Mackusick's* case is authority for, on its facts, in relation to this appeal, is that a sub-tenant like Maynard's cannot properly be regarded as an assignee of the plaintiff.

It follows that Maynard's, as sub-tenants of the plaintiff, were not bound by any prohibition against subletting etc. imposed on the plaintiff. Had the position been otherwise, on the facts, this appeal would be decided firmly in favour of the plaintiff without any regard to whether the finding of fact by the learned trial judge, as to the existence of the promise to which I have referred, went one way or the other.

But the relevance of the promise only arises for consideration if it can be said that a factual finding as to its existence will bring the matter within the scope of section 26 of the Ordinance to which reference has been made. If Lee Swee Hin did in fact make a promise that the ground floor would be returned to the plaintiff on Maynard's ceasing to carry on the business of a chemist, the question arises as to whether Maynard's were thereby prohibited from subletting the ground floor. It seems to me that, if such a promise had been made, Maynard's were in fact so prohibited and the plaintiff would have been entitled to a declaration that the judgment for possession against Maynard's was enforceable against the second defendants if the latter were sub-tenants of Maynard's.

The question therefore arises whether the second defendants became sub-tenants of Maynard's. The evidence, including that called on behalf of the second defendants, points to a monthly sub-tenancy at a rent of $132 per month. Why $132, one may ask? This is exactly the permissible maximum of 110 per centum of the rent of $120 per month paid by Maynard's which the Ordinance provides in the case of sublettings. The intention of Maynard's to create a tenancy as between themselves and the second defendants seems therefore clear. In any case they must be taken to have known that the Ordinance frowns on a rental to a sub-tenant exceeding $132 per month for the ground floor.

It was argued however that they have assigned their monthly tenancy of the ground floor, that therefore they have not sublet this floor at all and that, even if they did make the said promise, they were entitled to assign their tenancy of the ground floor to the second defendants without laying the latter open to a declaration under section 26 that the judgment for possessiin against Maynard's was enforceable against the second defendants.

An examination of the evidence reveals that neither Maynard's nor the second defendants regarded the relationship subsisting between them to be anything but one of landlord and tenant and the monthly rental of $132 was being regularly paid by the second defendants to Maynard's.

It should be noted that section 3 of the Statute of Frauds, which is still law in the Republic, provides that no lease, estate or interest in land shall be assigned unless by deed or note in writing signed by the party so assigning. It seems to me, therefore, that in the absence of a deed or note in writing signed by Maynard's it is impossible to hold that there was a valid assignment of the ground floor by Maynard's to the second defendants.

The question therefore arises as to what is the legal effect of the arrangements concluded between Maynard's and the second defendants in the absence of any deed or note in writing indicating the intention of the parties. In *Pollock & Anor.* v. *Stacy* [3] it was held that a demise of land for the whole of the term held by the grantor will not be deemed an assignment where the parties intended to create the relation of landlord and tenant. That case turned essentially on the fact that the intention to create the relation of assignor and assignee had not been proved by deed. Lord Denman C.J. in the course of his judgment said at page 1571:—

"The parties intended to contract the relation of landlord and tenant, and to pass the right of possession by a parol lease. This they were at liberty to do by law; and we therefore carry their lawful intention into effect. If we were to decide that the transaction was an assignment, we should at the same time decide that it was no assignment, being by parol only; and we should construe that which was expressed and intended to be a lease to be an assignment, merely *ut res pereat*, which is against a known salutary maxim.

As important rights and duties arise often from assignments of terms, the law has properly provided that the relation of assignor and assignee shall not be contracted unless the intention is proved by deed. But, in protecting against imperfect evidence of assignment, there was no need to alter the law of leasing; and it appears to us to remain unchanged: and we see no inconvenience in supporting as a lease that which was intended to be so, although it may pass all the lessor's interest."

The case of *Pollock* v. *Stacy* was considered in *Beardman* v. *Wilson* [4] without being specifically overruled. As Bovill C.J. said at page 58:—

"There was no deed in that case which could act as an assignment, and the court say 'The parties intended to contract the relation of landlord and tenant. This they were at liberty to do by law; and we therefore carry their lawful intention into effect'."

Byles J. interposed in the course of the argument to observe that in *Pollock* v. *Stacy* "the estate was one which could only pass by deed, and therefore the transaction between the parties could only operate as a demise, or not at all." Later Byles J. in his judgment said:—

"I have always understood that an underlease of the whole term though in form a lease, acts as an assignment, at least in the case where it can act as an assignment. The question what its effect is where it cannot, does not arise in this case; when it does, it may be necessary to consider further the case of *Pollock* v. *Stacy*."

I am of the opinion, having regard to the intention of the parties as clearly revealed by their evidence, that there was a clear subletting in this case within the meaning of the expression as set out in section 26 of the Ordinance.

This brings me to a review of the facts in dispute and a consideration of the learned trial judge's conclusion that Lee Swee Hin never made such a promise.

The important question of fact for determination by the court below was whether it was a term of Peter Chong's tenancy and later of Maynard's that they would give up possession on ceasing to run a dispensary on the ground floor of the premises in question. On this vital issue there were conflicting versions. The learned trial judge finally came to the conclusion that "Lee Swee Hin never said to the plaintiff that he would return to the ground floor to the plaintiff if he ceased to run the chemist's shop," and he accordingly found that it was not a term of either Peter Chong's tenancy or that of Maynard's that they should give up possession on ceasing to carry on the business of a dispensary on the ground floor. He, therefore, held that the plaintiff had not made out a case for recovery of possession under paragraph (b) of section 15(1) of the Ordinance. The learned trial judge, however, held that the plaintiff had made out a case for recovery of possession against Maynard's under paragraph (*l*) of the same section. As Maynard's have not appealed against his judgment I do not propose to interfere with it because it did not turn on whether or not a promise such as that referred to above was or was not made by Lee Swee Hin. The question, however, remains whether the learned trial judge came to the right conclusion as to this promise as, if his finding in this respect cannot be supported, then the declaration which he made under section 26 may have to be reversed.

I appreciate, as Lindley M.R. observed in *Coghlan* v. *Cumberland* [5] that:—

". . . when the question arises which witness is to be believed rather than another, and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may shew whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

I also bear in mind the observations made by Baggallay J.A. in *The Glannibanta* [6] 283 at page 287:—

"But the parties to the cause are nevertheless entitled, as well on question of fact as on question of law, to demand the decision of the Court of Appeal, and that court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses, and should make due allowance in this respect."

It should, however, be remembered that in a case involving the credibility of witnesses, Lord Greene M.R. said in *Yuill* v. *Yuill*:— [7]

"The most experienced judge may, albeit rarely, be deceived by a clever liar, or led to form an unfavourable opinion of an honest witness, and may express his view that his demeanour was excellent or bad as the case may be. Most experienced counsel can, I have no doubt, recall at least one case where this has happened to their knowledge. I may further point out that an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question. If it can be demonstrated to conviction that a witness whose demeanour has been praised by the trial judge has on some collateral matter deliberately given an untrue answer, the favourable view formed by the judge as to his demeanour must necesssarily lose its value."

Lord Robson said in *Khoo Sit Hoh & Ors.* v. *Lim Thean Tong*:— [8]

". . . it may be that in deciding between witnesses he has clearly failed on some point to take account of particular circumstances or probabilities material to an estimate of the evidence, or has given credence to testimony, perhaps plausibly put forward, which turns out on more careful analysis to be substantially inconsistent with itself, or with indisputable fact, but except in rare cases of that character, cases which are susceptible of being dealt with wholly by argument, a Court of Appeal will hesitate long before it disturbs the findings of a trial judge based on verbal testimony."

The principles applied by appellate courts in cases of trial by a single judge without a jury have received repeated consideration in a number of subsequent cases including *Benmax* v. *Austin*

Motor Co. Ltd.[9] and *Tay Kheng Hong* v. *Heap Moh Steamship Co. Ltd.*[10]

It is clear that if an Appellate Court is satisfied that a trial judge was plainly wrong on a question of fact and that any advantage which he enjoyed by virtue of having seen and heard the witnesses was not sufficient to explain his conclusion then it would be entitled to reject the trial judge's finding.

Counsel for the plaintiff urged us to reject the finding of the learned trial judge on the ground that he had mis-directed himself in his evaluation of the evidence and that the reasons for his conclusion were unsatisfactory if not plainly wrong in some parts.

It seems to me that there is merit in his complaint.

The plaintiff, *inter alia*, said that a few days before the tenancy of the ground floor was granted to Peter Chong he accompanied Lee Swee Hin in the latter's car to see the manager of Estate and Trust Agencies Ltd., one Low Cheng Mong, in order to obtain permission for the proposed sub-tenancy. Low Cheng Mong gave his consent and as Lee Swee Hin and the plaintiff left his office and were walking towards Lee Swee Hin's car the plaintiff told Lee Swee Hin that the manager had given his consent for the chemist's shop to move in, and that the ground floor was let out to him for running a chemist's shop. The plaintiff suggested fixing a period for the sub-tenancy. Lee Swee Hin suggested that this was not necessary and that he would return the ground floor to the plaintiff if he ceased to run the chemist's shop. The plaintiff agreed to that.

Lee Swee Hin, on the other hand, denied that he had ever been to the office of Estate and Trust Agencies Ltd. or that he had ever seen Low Cheng Mong there. Lee Swee Hin further denied that he ever told the plaintiff that he would return the ground floor to him if the chemist's shop should stop business.

The learned trial judge accepted the evidence of the plaintiff and Low Cheng Mong as to the visit to the latter's office and rejected the evidence of Lee Swee Hin in this respect. Nowhere in the rest of his judgment does he mention one single word more as to his acceptance of Lee Swee Hin as a witness of truth on other parts of his evidence and, in particular, as to the fact that he did not make the promise in question. The latter is, in point of time and circumstance, closely connected with the visit to the office of Estate and Trust Agencies Ltd. as to which he had already found Lee Swee Hin to be a liar.

Having rejected Lee Swee Hin's evidence as to this visit it seems to me that the learned trial judge should have tested the rest of his evidence, particularly with regard to whether he ever made the promise in question, with more than usual care, in order to determine whether the deliberate lie told by him about the visit had caused any favourable view formed by the trial judge as to his demeanour to lose its value.

In the present case the trial judge has not, in so many words, commented on Lee Swee Hin's demeanour at all and it is only by implication that this court can conclude that he formed a favourable view thereof.

With regard to the plaintiff's evidence, having accepted his evidence as to the visit, corroborated as it was by Low Cheng Mong, the learned trial judge went on to say that although Lee Swee Hin did not tell the truth about the visit to the manager, the plaintiff's demeanour on the other hand impressed him unfavourably and it seemed to him that the plaintiff did not tell the truth on at least two matters.

The first of the two lies to which he refers, relates to a sum of money which the plaintiff is said to have obtained from Lee Swee Hin and paid as compensation to one Wong Boon Pin, the occupier of a back room on the ground floor whereas Lee Swee Hin said that the plaintiff wanted $2,200 for the purpose of which $500 was towards payment of the plaintiff's own debts. The plaintiff claimed that he had handed over the whole sum of $2,200 to Wong Boon Pin. The learned trial judge commented on this lie as follows:—

> "It strikes me as incredible that the plaintiff would hand over the whole of the $2,200 to Wong Boon Pin without retaining the greater part of it for himself. I take the view that the plaintiff told a lie when he said that he handed over the second payment of $1,700 to Wong Boon Pin; and that the plaintiff told another lie when he said that Lee Swee Hin told him to hand over the $1,700 to Wong Boon Pin."

It seems to me that, while it may well be true that the plaintiff retained $500 for himself in order to pay his personal debts and handed the balance to Wong Boon Pin, the strictures passed by the learned trial judge on the plaintiff's conduct in relation to this matter were not entirely justified nor does it seem to me that the acceptance of Lee Swee Hin's evidence with regard to this matter justifies the conclusion that the plaintiff retained the greater part of the money for himself. Furthermore, Lee Swee Hin could have told the plaintiff that the second amount of $1,700 was intended for the occupier of the back room, Wong Boon Pin, even though Lee Swee Hin did not know his name. He could have said this even if the plaintiff did not actually make the required payment. However, with regard to this first lie one must concede that there was some justification for the learned trial judge's finding in the sense that the plaintiff did not at least make payment in full.

The learned trial judge then dealt with the second lie in the following terms:—

"He said in his examination-in-chief that he was introduced by Lee Swee Hin to Peter Chong on the 1st March, 1960, when Peter Chong came to 202 Orchard Road. He admitted in cross-examination, however, that he received $1,700 from Peter Chong on the 27th February, 1960, at his bookshop in Robinson Road, and that he received $500 from Peter Chong at the same place prior to that date. It seems to me untrue, therefore, that the plaintiff met Peter Chong for the first time on the 1st March, 1960."

On a careful examination of the evidence it is clear that it was in cross-examination and not in examination-in-chief, as the learned trial judge states, that the plaintiff said that he was under the impression that he was being introduced to Peter Chong on 1st March, 1960. During the same cross-examination he agreed that he had been to Peter Chong's office a few days before 1st March, 1960 when the two sums of money referred to above were handed over by Peter Chong to Lee Swee Hin who handed them to him. It seems to me that the plaintiff did not lie in this matter at all. The short point is this: that although he had been to Peter Chong's bookshop on previous occasions he had had no conversation with him at all and it was only on the 1st March, 1960 when Peter Chong arrived to take over the premises in Orchard Road that Peter Chong nodded to him when Lee Swee Hin said something in English to Peter Chong. It was then that he formed the impression that he was being formally introduced to Peter Chong.

With regard to the lies told by the plaintiff and Lee Swee Hin respectively, it seems to me that they told at least one lie each and, as I have said earlier, the lie told by Lee Swee Hin was the bigger and more material lie in the sense that it is closer in point of time and circumstance to the important issue of fact in this case as to the promise made by Lee Swee Hin.

After having dealt with the lies told by these two witnesses the learned trial judge concluded as follows:—

"It appears to me that, as Peter Chong had to spend a considerable sum of money on getting vacant possession of the ground floor and also on altering and renovating the ground floor for the purpose of running a dispensary, he would not have agreed to fixing a period for the monthly tenancy, if the plaintiff had raised this matter with him. It appears to me further that Peter Chong would not have agreed to give up the ground floor to the plaintiff in the event of his ceasing to run the dispensary. I find that Peter Chong never authorized Lee Swee Hin to tell the plaintiff that the ground floor would be returned to him in such an event. That being so, it seems highly improbable to me that Lee Swee Hin would have made such a promise to the plaintiff. It also seems highly improbable that the plaintiff suggested the fixing of a period for the monthly tenancy, considering the amount of money Peter Chong had to spend on getting vacant possession of the ground floor and altering and renovating it. I therefore come to the conclusion that Lee Swee Hin never said to the plaintiff that he would return the ground floor to the plaintiff if he ceased to run the chemist's shop."

Some of the findings herein are irrelevant to the main issue and the reasoning here, to my mind, is, on the whole, unsatisfactory. Although it may be said to be based partially on the perception of witnesses (of whom Peter Chong however was not one) it is largely evaluatory in the sense that it is based on inferences from specific facts as found by the judge. He does not, however, deal with Lee Swee Hin's deliberate lie, in the course of his reasoning, and its effect on his assessment of Lee Swee Hin as a witness of truth with regard to his evidence as to the promise. Moreover, there is no reason why the plaintiff should not have suggested fixing a term for the monthly tenancy. Furthermore, if he did make such a suggestion (which he could well have done) there is no reason why Lee Swee Hin should not have reacted with a counter-proposal such as that alleged by the plaintiff with regard to returning the ground floor to him on ceasing business.

For these reasons it seems to me that the learned trial judge was plainly wrong in his approach to and evaluation of the evidence in this case with regard to the promise alleged to have been made by Lee Swee Hin. However, as I have not had the advantage of seeing the witnesses myself, I do not think that I should substitute my own finding for his. I would therefore order a retrial of the action between the plaintiff and the second defendants.

Tan Ah Tah F.J. and **Chua J.** concurred.

Retrial ordered.

Solicitors: *Hilborne & Co.; Laycock & Ong.*